



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
re HUGGER DE HONDURAS AND VISION TEX
(HONDURAS)**

FINDINGS, RECOMMENDATIONS AND STATUS REPORT

October 8, 2009

I. Introduction

This report outlines the WRC's findings and recommendations concerning alleged code of conduct violations at two apparel factories located in Honduras: Hugger de Honduras (henceforth "Hugger") and Vision Tex. Hugger is located in the city of San Pedro Sula; Vision Tex is located in the nearby city of Choloma. Prior to the closure of these facilities in January 2009, Nike sourced collegiate licensed apparel from both facilities, primarily on a subcontract basis. Nike was by far the largest customer at both factories for a substantial period of time.¹

Because both cases entail essentially the same alleged code of conduct violations, involve the same licensee, are located in the same region, and came to light at the same time, the WRC has chosen to report on both cases together in the present report.

The WRC received complaints concerning both facilities in January 2009 from worker representatives. In the case of both facilities, workers alleged that the plant failed to pay them any of the terminal compensation to which they are legally entitled.

After receiving the complaints, the WRC conducted significant fact-gathering, including interviews with management and workers and a review of substantial documentation in January and May 2009.

Code of Conduct Violations

The WRC found that both Hugger and Vision Tex shut down on January 19, 2009 without prior warning and did not pay workers legally mandated terminal compensation. In the case of Vision Tex, additionally we found that employees were not paid for their last week of work. The total amount owed to the workers of Hugger at the time of closure was \$2,030,359.85, while the total amount owed to the employees of Vision Tex was \$571,895.62. The workers of the two plants have since been able to generate fifteen percent and twenty-one percent, respectively, of the compensation owed to them through the liquidation of the physical assets of the factories. That liquidation process is now effectively over. The workers of Hugger are still owed \$1,725,805.87; the workers of Vision Tex are still owed \$450,459.49.

In addition to examining the severance issues, the WRC has investigated other alleged labor rights violations at Vision Tex. We will report our findings concerning these allegations separately in the future.

Recommended Corrective Action and Status

Since it is clear at this juncture that no appreciable amount of additional funds will be paid by the factories' owners, and since there is no other potential source of funds besides the plants' former customers, the WRC has recommended to Nike that it ask its contractors – which were the factories' primary direct buyers prior to their closure – to provide the funds necessary to make the workers whole. The contractors are New Holland Lingerie (at Vision Tex) and Anvil Knitwear and Haddad Apparel Group (at Hugger). All three companies are based in the United States.

Nike is obligated under university codes of conduct to ensure that labor rights violations by its contractors are remedied. While it is debatable whether university codes of conduct obligate a

¹ Aside from Nike, and companies producing Nike product on its behalf, the two other brands identified as being produced at the two facilities were Hanesbrands and Aeropostale. Neither is a university licensee.

licensee itself to make workers whole through the use of its own resources, there is no question that a licensee must do whatever it reasonably can to compel its contractors to correct code of conduct violations. In this case, remediation will only occur if Nike's contractors – Anvil, New Holland and Haddad – pay the workers. Nike acknowledges that it has ongoing business relationships with New Holland, Anvil and Haddad. It is appropriate that Nike use the influence it has over these companies to convince them to remedy the violations.

Licensees compelling their contractors to contribute to a supplier factory's fulfillment of its legal obligations to workers is an approach that has been successfully employed in a number of other cases, most recently that of the Estofel plant in Guatemala.²

Nike has indicated that it has discussed the matter with its business partners. However, this has not led to progress on remediation; the violations remain outstanding.

It bears noting that in communications with the WRC and at least one affiliate university, Nike has downplayed its role in the facilities, suggesting that its production was not substantial in either plant and that its responsibility for addressing the violations is therefore diminished. As detailed herein, the WRC has found, contrary to Nike's assertions, that Nike was the dominant brand produced for a substantial period of time at both facilities. The basis for the WRC's conclusions in this area is discussed in this report.

II. Methodology

The WRC's findings are based on the following sources of evidence:

- Interviews with managers and production workers at both facilities with knowledge about the plants' production program. In the case of Hugger, the WRC conducted group and individual interviews with eleven managers and employees. In the case of Vision Tex, the WRC conducted group and individual interviews with twelve former managers and staff.
- Interviews with staff of the *Central General de Trabajadores* (CGT).
- Invoices and production records uncovered at the Vision Tex facility following its closure, totaling several hundred pages.
- Written statements from Hugger and Vision Tex managers and workers concerning the production history of both facilities.
- Calculations of workers' terminal benefits conducted by the Honduran Ministry of Labor, as provided by representatives of Hugger and Vision Tex workers.
- A physical inspection of both facilities and an inspection of their remaining inventory.
- A meeting with the regional director and two lead labor inspectors for the Honduran Ministry of Labor, Department of Cortez.
- An analysis of Honduran law with respect to legally mandated benefits.
- Multiple discussions with representatives of Nike.

The findings reached by the WRC on the basis of this evidence, as well as recommendations and the present status of remediation, are outlined in the following section.

² WRC, *Factory Case Summary re Estofel (Guatemala)* (Apr. 1, 2009); Fair Labor Association, *Summary Report: Third Party Complaint Regarding Estofel S.A., Guatemala* (Mar. 25, 2009).

III. Findings, Recommendations, and Current Status

Non-Payment of Legally Mandated Terminal Benefits

Legal Requirements

Honduran law establishes that workers are entitled to certain benefits at the end of employment.

First, workers are entitled to accrued severance when their employment ends, unless they quit of their own accord³ or are dismissed with just cause (neither exception applies in the present cases). The amount of severance is determined by the worker's tenure, as follows⁴:

- After continuous employment of no less than three (3) months and no more than six (6) months, an amount equal to ten (10) days of salary;
- After continuous employment of more than six (6) months but less than one (1) year, an amount equal to twenty (20) days of salary;
- After continuous employment of more than one (1) year, an amount equal to one (1) month of salary for each year worked, and for any additional period of employment of less than one (1) year, a proportional amount;
- Up to a maximum limit of eight (8) months of salary.

Second, workers are entitled to a payout of any accrued but unused legally mandated vacation days, unless they are dismissed with just cause.⁵ The number of vacation days to which a worker is entitled per year is based on his or her tenure, is as follows⁶:

- After one (1) year of continuous service, ten (10) consecutive working days;
- After two (2) years of continuous service, twelve (12) consecutive working days;
- After three (3) years of continuous service, fifteen (15) consecutive working days; and,
- After four (4) years or more of continuous service, twenty (20) consecutive working days.

Third, in cases where employment is terminated without prior notice or within less than thirty (30) days from the date on which workers are notified of their termination, workers are entitled to "notice pay."⁷ This provision is applicable in five circumstances, including the inability of the company to continue in operation due to a lack of financial resources and the inability of the company to remain in operation with a reasonable minimum profit.⁸ Workers are entitled to their average salary on a pro-rated basis for the thirty days of the notice period.

Finally, workers are entitled – when employment ends for any reason – to compensation accrued toward the payment of two legally mandated annual bonuses, known as the "thirteenth month" (or

³ Honduran Labor Code, Article 114. This provision establishes a number of circumstances involving negligence on the part of the employer – such as failure to pay workers in accordance with the law – in which a worker who quits is entitled to severance benefits; in such cases, the worker's departure is considered the responsibility of the employer.

⁴ *Id.*, Art. 120.

⁵ *Id.*, Art. 349.

⁶ *Id.*, Art. 346.

⁷ *Id.* Art. 102.

⁸ *Id.*, Art. 100, §§ 1, 3-5, Art. 102,

aguinaldo)⁹ and “fourteenth month.”¹⁰ Each bonus is equal to one month’s average salary. Except by mutual agreement between workers and the employer, the thirteenth month is paid in December, while the fourteenth month is paid in June. Workers are entitled upon dismissal to the amount accrued toward the next bonus on a pro-rated basis.

Compensation Owed to Workers

Both Hugger and Vision Tex closed on January 19, 2009 without prior warning to employees. In both cases, workers arrived at work to find posted notices stating that all workers were terminated, effective immediately. At neither factory were workers provided with any terminal compensation, in clear violations of applicable law and, therefore, of university codes of conduct.

Workers subsequently asked the Honduran Ministry of Labor to calculate the compensation due to them. Ministry personnel determined that the workers from both factories are entitled to each of the four kinds of terminal compensation outlined in the previous section. In the case of Vision Tex, workers were also deprived of their final week’s pay. The total combined amount owed to the employees of Hugger at the time of the closure was \$2,030,359.85. The total amount owed to the employees of Vision Tex was \$571,895.62.

Subsequent to the closures, workers at both facilities established *ad hoc* commissions representing both management and production workers. In both cases, the purpose of the commission was twofold: (1) to manage the process of liquidating the assets that were abandoned by the factories upon closure and to distribute the proceeds to the workforce (under Honduran law, employees are entitled to take possession of such assets when their employer fails to meet its debt to the employees); and (2) to oversee efforts to obtain from other stakeholders, including the companies who profited from the workers’ labor, the funds owed to the workers. The *ad hoc* commissions were assisted by the CGT, which had organized affiliate unions at both facilities prior to each plant’s closure.

The following table includes the amounts owed to workers at each facility and the funds generated to date – based on calculations by the Honduran Ministry of Labor and information supplied by the *ad hoc* commissions. To our knowledge, these figures are not disputed by any party to the case:

⁹ National Assembly of Honduras, *The 7th day and 13th Month as Aguinaldo Law*, Decree No. 112 (Oct. 28, 1982);, Gazette No. 23848 (Nov. 11, 1982).

¹⁰ President of the Republic of Honduras, *Regulation of the Fourteenth Month of Salary as a Social Compensation*. Decree No. 135-94, Agreement No. 02-95 (Feb. 6, 1995).

Summary ¹¹			
	Hugger	Vision Tex	Combined Total
Amount Owed to Workers Upon Closure in Jan 09	\$2,030,359.85	\$571,895.62	\$2,602,255.46
Funds Raised through Liquidation of Factory Assets	\$304,553.98	\$121,436.12	\$425,990.10
Funds Contributed by Nike, Other Brands, or Intermediaries	\$0.00	\$0.00	\$0.00
Percentage of Owed Compensation Received to Date	15%	21%	16%
<i>Amount Owed at Present</i>	\$1,725,805.87	\$450,459.49	\$2,176,265.36

Liquidation Process

As outlined in the table, workers at both facilities have been able to generate some funds through the liquidation of the plant's physical assets (machinery, equipment, furniture, etc). At both factories, virtually all of the remaining assets have now been sold and very little additional money is expected to be generated. In the case of Hugger, the last remaining valuable items were sold on September 2, 2009. In the case of Vision Tex, this occurred the week of August 24.

As indicated in the table, the liquidation process has generated only a fraction of the compensation owed to the workers: 15% in the case of Hugger (unfortunately, some of Hugger's most valuable assets were removed from the plant by management during the Christmas holiday, shortly before the closure was announced to workers) and 21% in the case of Vision Tex. These are typical results for liquidation processes in the global apparel industry.

Nike Production

Both facilities manufactured university licensed Nike apparel. Production of collegiate apparel, combined with production of other Nike garments, constituted the bulk of the work at Hugger and Vision Tex for substantial periods of time.

Nike has asserted at various points that its goods were not the primary products manufactured at either plant and that its responsibility is therefore diminished.¹² The evidence the WRC has gathered contradicts these claims. Because the extent of production of Nike goods in the facilities has been a matter of some dispute, we review the evidence gathered by the WRC below.

Hugger

Hugger de Honduras has been disclosed by Nike as a supplier of university logo goods a total of four times: in January, April and July of 2008 and October of 2007. The facility has also produced substantial Nike apparel on a subcontract basis for another factory in Honduras, Star, which has been disclosed by Nike as a producer of university logo goods every quarter since April 2006. Star is owned by U.S.-based Anvil Knitwear. Nike has also produced, via

¹¹ Based on Interbank exchange rate (Oct. 7, 2009)

¹² It should be noted that university codes of conduct do not actually recognize any lesser degree of responsibility for labor rights compliance at factories where a licensee represents a smaller as opposed to greater portion of the production.

intermediaries, substantial non-collegiate goods at Hugger, since as far back as 2000.¹³

Overall, the WRC found – based on interviews with plant management and production employees – that Nike goods represented virtually all of the plant’s production from 2000 through the end of 2006 and that Nike goods continued to represent a smaller albeit still substantial portion of the plant’s production up until the plant’s closure in January 2009.

In a letter to the WRC dated July 22, Nike claimed that “[a]t Hugger from January through December 2008, the volume of Nike product ordered by the primary contractor was approximately 1.3% of the total volume of goods produced at the factory...” It also stated, without offering any figures, that it “believe[s] that Nike was a larger percentage of the total production in 2007 than in 2008.” Nike provided no information at all concerning the production of its goods during 2000 through 2006.

The WRC has since received a copy of a lengthy letter from Hugger’s management and production workers stating that Nike’s claims are erroneous. The letter is signed by 101 former Hugger management and non-management employees. It states that “in the year 2008 [Nike] represented approximately [60%] of the total production at Hugger”; that in 2007 “Nike represented [60%] of the total production in the plant”; and that during 2001 through 2006 “Nike represented 100% of the total production in the plant.” (WRC translation, emphasis in the original) The letter provides detailed information as to the basis for these figures, including the number of production modules dedicated to Nike goods and the identification numbers of the products produced.

The signatories of the letter have extensive and direct knowledge of these matters; they include individuals who were in charge of or took part in the plant’s production day-in and day-out throughout the period in question. The richly detailed information provided by these managers and workers, which is consistent with testimony the WRC previously gathered, is highly credible. While Hugger management and workers provided detailed information concerning production levels and dates, Nike has provided very little concrete information in support of its contentions. Indeed, it has provided no information whatsoever concerning the volume of Nike goods in the plant between 2000 and 2006, when workers and management report that these goods represented virtually all of the facility’s production.

WRC representatives toured the Hugger plant in May 2009. Nike’s presence in the plant was overwhelmingly visible. Hanging over both main productions rooms were large three-sided Nike signs; no other brands’ signs were so displayed. Large posters with Nike’s code of conduct were displayed in various places throughout the facility. The great majority of the garments left at the plant after closure were Nike t-shirts.

In view of the evidence and information available, the WRC must conclude that Nike’s production at Hugger was quite substantial and that claims to the contrary are not accurate.

Vision Tex

Vision Tex had not been disclosed as a supplier of university logo goods. However, the factory produced Nike goods for several companies in Honduras on a subcontract basis, one of which has been disclosed by Nike as a supplier of university goods for WRC affiliate colleges and

¹³ These intermediary firms were Liberty de Honduras, CISA, and Pinehurst.

universities. This factory, New Holland, was disclosed as a producer of university product a total of sixteen times: in January, April, July and October of 2008 and 2007, April and October of 2006, April and July of 2005, July 2004, January and December of 2003, and July 2000. The WRC confirmed that some of the garments Vision Tex produced for New Holland were collegiate licensed apparel. The factory also produced Nike goods for another apparel firm, the Hawkins Group.

In a July 22 letter to the WRC, Nike stated: “At Vision Tex, the volume of Nike product ordered by our primary contractor during 2008 was approximately 852,000 units of Nike Team apparel, as well as 100,000 units of Nike apparel for one of our licensees, Haddad. It was estimated that Nike product was 43% of the total 2.2 million units produced by this factory in 2008.”

First, it should be noted that 43% is a very substantial portion of a plant’s production. Indeed, this is a greater share of production than even the largest brands typically account for at contract factories.

Second, given the evidence the WRC has gathered, we believe that Nike goods made up a greater share of the plant’s production than Nike has acknowledged. According to mutually corroborative worker testimony, from August 2007 until the plant’s closure in January 2009, twelve to fourteen of the plant’s sixteen lines produced Nike products exclusively or almost exclusively. This worker testimony was further corroborated by shipping invoices obtained by the WRC, which were found at the factory following its closure. The invoices were for production for New Holland, whose work accounted for the vast majority of Vision Tex’s production during this period. A review of a representative sample of the invoices showed that nearly all of the apparel manufactured for New Holland was Nike product.

Recommendations and Nike Response

The WRC has recommended that Nike use all of the influence at its disposal to compel each of its contractors that subcontracted Nike production to Vision Tex and Hugger to ensure that the factories’ former workers receive the compensation owed to them. The direct contractors which remain in operation are Anvil, Haddad, and New Holland Lingerie (also known as MB Sportswear), each of which retains a substantial business relationship with Nike. Nike should specifically press these contractors to provide the funds to the workers.

The WRC first recommended this course of action to Nike in writing on February 19, 2009, approximately three weeks after the closures occurred, and has subsequently reiterated it during a series of conference calls during May and June and again in a letter dated July 9, 2009. We are aware of no action taken by Nike between February and July. On July 22, 2009, Nike informed the WRC that it had spoken with its primary contractors in Honduras regarding this matter. However, there has been no progress.

Several points bear mentioning in relation to the WRC’s recommendations in this case:

First, Nike – like all other university licensees – is obligated under university codes of conduct to ensure that its contractors comply with applicable domestic law. Where violations are identified, it is incumbent upon the licensee to use its influence over its suppliers to correct the violations. While it may be debated whether codes of conduct require licensees to make workers whole through the use of their own resources, there is no question that licensees must do whatever they reasonably can to compel their contractors and suppliers to correct code of conduct violations.

The WRC has thus recommended that Nike approach the present violations in the same manner as would be appropriate in any other case: by pressing its direct suppliers to remediate the violations that have been committed.

Second, the specific approach the WRC has recommended – the licensee compelling its contractor(s) to contribute to a supplier factory’s fulfillment of its legal obligations to workers – has been successfully employed in other cases. The most recent example is the case of the Estofel factory in Guatemala, in which Gear for Sports and Hanesbrands successfully pressed their direct supplier to ensure that workers at a subcontracted facility were provided with the compensation due to them.¹⁴

Third, university licensees have a responsibility to ensure that the suppliers they use to produce university logo apparel comply with domestic laws, regardless of the percentage of the plant’s overall production that their goods represent. In this case, the available evidence compels the conclusion not only that Nike logo goods were produced at the facilities in question, but also that Nike was the *dominant* brand of apparel manufactured at both facilities. The severance workers have been unlawfully denied was accrued by these workers primarily while toiling in the manufacture of Nike product. As such, Nike has, in our view, a special moral responsibility to ensure that the worker rights violations that occurred are corrected.

Nike failed in these cases to monitor code compliance effectively within its own supply chain. As Nike is well aware, non-payment of severance in the context of factory closures is a serious problem in the apparel industry. It is incumbent upon Nike, and other licensees, to be aware of factory closures in their supply chains and to monitor the closure process to ensure that suppliers fulfill their legal obligations. However, in neither of the present cases did Nike identify the violations of workers’ severance rights through its own monitoring. Nike was instead informed of the violations by the WRC, after we investigated in response to a worker complaint. The problem was then compounded by Nike’s failure to act on the WRC’s findings.

The WRC will continue to monitor both cases and issue updates as developments unfold.

¹⁴ WRC, *Factory Case Summary re Estofel (Guatemala)* (April 1, 2009); Fair Labor Association, *Summary Report: Third Party Complaint Regarding Estofel S.A., Guatemala* (March 25, 2009).